1951. File No. 9EA 1057

A CLASS (P.W.) DEPARTMENT (K) BRANCH

Subject:— Indian Electricity Act 1910 Proposal for the Amendment of ——

IV

A[K]1951

File No. 9EA 1057 K Br.

Ltd. Scott. Slip. 21 A.

Std. Sectt. 78A e.

G R., G D., No. 2408, dated 22-5-22.]

Correspondence

DOCKET SHEET (B)

Subject :—

File No. OEA / 1057

P.W. DEPT.

K BRANCH.

References :—

Copies are supplied from the orignal file A(M) 1957

Date.	To whom sent.	Notes and instructions.

Central Electrictity Commission,
"Cleremont", Simla 4.

No. X-8101
January 22, 1951.

The Secretary to Government,
Public Works Department,
BOMBAY.

Sub:- Proposal for amendment of the Indian Electrictity Act, 1910.

Sir,

In accordance with the provisions of sub-section (h) of Section 2 of the Indian Electricity Act, 1910, 'Kucebsee' means any person licensed under Part II of the Act to supply energy. Under the provisions if Sections 5 and 7 of the Act, where Government purchase undertaking either on revocation of licensees or on their expiry, the licenses c ase to have any further operation. Some time ago it was reported that a trial court in the Pubjab held that Government could not grant a licence to itself. Accordingly, the Government while running Stat-owned Electricity Supply Undertakings have not been deemed to be licensees within the meaning of sub-section (h) of section 2 ibid and there is some scope for doubt whether Government can exercise the powers and discharge the obligations imposed on licensees under sections 12 to 30 of the Act.

This Commission is aware that your Government has been engaging in the business of electricty supply for some time past. Could you kindly let this Commission know the provision of law under which your Government has been exercising the powers, enjoying the privileges and discharging the duties of the licensees provided for under sectiohs 12 to 30 of the Act. Also please intimate whether your have experienced any difficulties in exercising any powers under the above sections.

A very eardy reply in the matter is required.

Yours faithfully,

Sd/- T.N.Idnani
Senior Project Officer.

3

1528/48
8959

El.Br.(I) P. W. D.

Submitted.

2. No license under the I.E.Act has been deemed necy. in respect of running Govt. Electricity Undertakings. No specific law has been passed for exercising the powers and discharging the obligations imposed on licensees under sections 12 to 30 of the Act.

3. The Elecl. Commr. and the Elecl. Engr. to Govt. may see u.o. the letter from the Central Ely. Commission and offer their remarks in the matter stating whether they have experienced any difficulty in exercising the power under the said sections.

Id/-
1-2-51.

Id/-
1-2-51.

u.o. to Elecl. Commr. and El. Engr. to Govt. dt.5-2-51.

5

Below P.W.D. U.O.R. No.1528/48/7959 dated 5-2-1951.

Electric Grid Offices.

Under the Indian Electricity Act, 1910, the provincial Government is the licensing authority. A dicense is granted to a non-Government undertaking in order to give it the statutory powers to carry out its works such as the opening and breaking up of streets, etc. and to lay down electric supply lines and other works (Section 3 (1)). In the case of a Government undertaking, a licnese is not necessary for the above purpose as, such statutory powers are deemed to be vested in the Government. Powers of Telegraph authority are granted to the concerned department to erect poles, cross roads and perform such other acts for purposes of giving and maintaining electric supply.

Where a license is granted to an undertaking, terms and conditions of supply are prescribed by Government in the said licanse. For a Government undertaking which foes not require a license, Government approve terms and conditions of supply which are on the same lines as a licensee's conditions and specific mention is made of the fact that they should be interpreted in accordance with the provisions of the Indian Electricity Act. Besides, all rules made by the Central Electricity Board are binding on all Government undertakings (Section 37(3)).

It will therefore be seen that there are provisions in the Act, as mentioned above, authorising Givernment to undertake the business of generating, transmitting and supplying electricity without a licence. In fact, on the contrary, the Act provides that where Government purchases a licensed undertaking under Section 5(d) or 7(2), the license, so far as Government is concerned, authmatically ceases to have any further operation, except certain offences which are punishabde, as in the cade of the licensees, as though Government were a licensee (Section 49).

Id/-
3-5-51.

The Secretary to Govt.,
Public Works Deptt.,
Bombay.

U.O.R. No. PLE/12578
Bombay 1, 4th May 1951.

Through the Electrical Engineer to Govt. Bombay.

Below U.O.R. No.PLE/12578 dated the 4th May 1951, from the Chief Engineer, Electric Grid, Bombay.

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No. LRM 31 / 1799 of 1951.

Bombay, 17th May 1951.

Passed on, with compliments to Government in the Public Works Department.

2. So far as electrical undertakings purchased by Government, either under section 5(d) or section 7(2) of the Indian Electricity Act, 1910, are concerned, it is clear from the provise to section 5(e)(ii) or 7(3)(a) respectively that the license shall, after purchase, remain in force, except in so far as the Provincial Government is concerned. This can be interpretted to mean that the rights and powers specifically conferred on Government under the terms and conditions of that license cease to have any operation after the purchase of the undertaking by Government.

3. As regards the electrical undertakings owned by the State are concerned, no license under section 3 or sanction under section 28 of the Indian Electricity Act, 1910, is necessary for the purpose of engaging in the business of supplying energy, since in both these cases, Government itself is the sanctioning authority and neither of these sections are specifically made applicable to Government.

4. As regards the powers exercised by a licensee on the strength of the license granted to him by Government, it appears that these powers can be considered as inherent where Government itself runs the undertaking.

5. No difficulty has been experienced by this Department in respect of the electrical undertakings under its charge.

Sd/-
Electrical Engineer to Govt.

IEA 1051
43356

K.B.

The remarks of the C.E.,B.E.G., and the Elecl. Emgr. to Govt. are submitted with ref. to the O.N., dt. the 1-2-51.

2. With ref. to the A.A.S's orders at P. ante, as the remarks of both the offices have since been received no adinterim reply is necy.

3. The Central Ely. Commission may be informed on the lines of the remarks made by the C.E.,B.E.G., and the Elecl. Engrs., with ref. to it's letter, dt. the 22-1-51, as per the draft put up for approach.

Id/-
30-5-51.

cl. copy placed
at pp.19-20 post.
Id/-
31-5-51.

D.S. Id/-
30-5-51.

*cl. copy of draft pl.

Secy. Id/-
31-5

as amended
Id/-
31-5

No. IEA 1051 K.

Public Works Department,
Bombay Castle (Bombay No.1),
1st June 1951.

From

Shri K.V.Joglekar, B.E.,B.S.E.(I),
Deputy Secretary to the Government of Bombay
Public Works Department.

To

The Senior Project Officer,
Central Electricity Commission,
"Cleremont", Simla 4.

Subject:- Proposal for amendment of the Indian Electricxity Act, 1910.

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Sir,

With reference to your letter No.A-8101, dated the 22nd January 1951, and the subsequent reminders of even number, dated the 26th March 1951 and the 16th April 1951, on the above subject, I am directed to state that, so far as electric undertakings purchased by Government under section 5(d) or section 7(2) of the Indian Electricity Act, 1910, are concerned, it is clear from the proviso to section 5(e)(ii) or 7(3)(b) respectively that the license shall, after purchase, cease to have further operation. This has been held to mean that the Govt. when carrying out or operating an electric supply scheme does not require a license. According to Meares's Law relating to electrical energy in India etc. (1941 edition) there is no reason why Govt. should not, if it so chooses, grant a license to one of its own departments or officers by designation or by name (vide pp.134-135). The Indian Electricity Act is based on the law in U.K. where the Crown is deemed to have several inherent powersx and rights and only the "express" provisions of the law can derogate from these. Accordingly we fine in the Indian Electricity Act a reference only to a few restrictive provisions of law which are 'binding' on Govt. e.g. section 30(3), section 37(3) and section 49. There is no specific provision in the Act conferring on Govt., as a licensee, any rights or powers, since these are deemed to be inherent; while as regards obligations other than those mentioned in the three sections cited above, it is assumed that Government will, as a matter of course, do nothing contrary to the public welfare (Meares, ibid, p.134).

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2. If the view that Government cannot grant a license to itself or to its department or officers, is held to be correct, it would obviously be necessary to amend the Indian Electricity Act to confer on the Government (in cases where Government carries out or oprates an electricity scheme) the powers duties and responsibilities of a licensee, save those which under the present act depend solely on Government sanction or are on Government's discretion.

3. In this State, it is not usual to grant a license to the Government or a Government department or officer. No difficulty has been experienced so far by this Government in respect of the electric undertakings under its charge. Where this Government carried out departmentally an electricity supply scheme or oporation of supply which are on the same lines as the licenses on, it approves terms and conditions and specific mention conditions. is made of the fact that they should be interpreted in accordance with the provisions of the I.E.Act.

Yours faithfully,

Sd/-
2-6-51.
Deputy Secretary to the Government
of Bombay, Public Works Department.

D.A.- Nil.

Copy, for information, to -

the Chief Engineer, Bombay Electric Grid (with reference to his No.PLE/12578, dated the 4th May 1951),
the Electrical Engineer to Government (with reference to his No. LRM 31/1799, dated the 17-5-51).